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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/993,988	11/16/2001	Margaret Henderson Hasse	8786	7943

27752 7590 05/22/2003

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EXAMINER

RUHL, DENNIS WILLIAM

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 05/22/2003

4

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/993,988

Applicant(s)

Hasse et al.

Examiner

Ruhl

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6, 7, 9-11, 13-20 is/are rejected.
- 7) ☒ Claim(s) 5, 8, 12 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2, 3
- 4) ☐ Interview Summary (PTO-413) Paper No(s) ____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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1. Claims 1,9,10,13, are objected to because of the following informalities:

For claims 1 (line 4), and 9 (line 5), there is no antecedent basis for "the second surface". No second surface has previously been claimed.

For claim 10, there is no antecedent basis for "the tissue". No " tissue" has previously been claimed. Applicant should adopt the language such as found in pending claim 2.

For claim 13, the examiner assumes that what is being claimed is that the overwrap is made of 50% rayon and 50% polypropylene. The way the sentence is written is objected to because it is not a grammatically correct sentence. The overwrap is **a** thermally bonded 50% rayon 50% polypropylene **what?** There is no noun in this sentence for the word "a". Is it possibly a sheet, or a blend, or a mixture, or what?

Appropriate correction is required.

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 8,9,17,18, are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

For claim 8, what does the term "non-aggressive" mean? What kind of structure does this term require for the overwrap? The term "non-aggressive" is not defined in the specification and the examiner is not clear as to what this term means. For purposes of examination this has been interpreted as an overwrap with minimal patentable weight given to the term "non-aggressive".

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For claims 9,17,18, applicant has recited "a withdrawal means", or an "insertion means" and the examiner notes that no function has been associated with the means language. Proper means plus function language must have the function of the means recited so that it is clear what the scope of the means language is. A withdrawal means by itself (or insertion means) with no functional recitation of what the means does, is indefinite. In these claims the examiner does not know what the withdrawal means is for, so the claim is indefinite. With respect to the insertion means, what does it insert? During insertion the way a tampon is inserted (i.e. insertion means) is by the user, not by a device or some kind of structure. It is not for the examiner to assume and guess as to what the means language really is attempting to recite. The claims are indefinite for the improper use of means plus function language. Correction is required.

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1,2,7,9,10,14,16-20, are rejected under 35 U.S.C. 102(b) as being anticipated by Balzar (5891123).

For claims 1,7,9,14,16,17,19,20, Balzar discloses a tampon and a method of making a tampon, where the tampon is made of absorbent material that is compressed into an absorbent member. The absorbent material is 10 and has surfaces and ends as claimed. The overwrap is 22 and is fluid wicking, has a skirt portion 48, substantially covers the exterior surface of the absorbent member as claimed, and permeates into an

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inner region as claimed. It is inherent in the disclosure of Balzar that the skirt portion extends about 2mm or 5mm from the withdrawal end of the absorbent material. About 50% of a person's finger is placed inside the skirt portion that extends past the withdrawal end and this inherently satisfies the claimed range of claims 7 and 14(1/2 of a persons finger is more than 2mm or even 5mm in length). As claim 9 is best understood by the examiner the withdrawal means is 88.

For claims 2,10, the overwrap has low adherence to tissue as claimed.

For claim 18 a best understood by the examiner, the insertion means is the combination of 94,96.

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

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8. Claims 3,4,6,11,15, are rejected under 35 U.S.C. 103(a) as being unpatentable over Balzar (5891123) in view of Sheldon et al. (5084038). For claim 6, the term "hydroentangled" is a product by process limitation and only the end structure that the process results in will be given patentable weight, not the manner in which it has been made. An overwrap with the same end structure can be made by different methods, so the limitation of hydroentangled does not recite any further structure to the overwrap, other than the overwrap itself.

For claims 3,4,6,15, Balzar does not disclose that the overwrap can be made of natural and synthetic fibers in the claimed ratio (rayon/polyester). Balzar does list numerous materials that are suitable for the overwrap and does state that natural or synthetic are suitable, but Balzar does not disclose a combination of natural and synthetic fibers. Sheldon discloses a tampon that has an overwrap covering the absorbent material of the tampon (as is well known and old in the tampon art). Sheldon discloses that a particularly useful overwrap can be made of 15% rayon and 85% polyester. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide Balzar with the preferred overwrap of Sheldon so that an overwrap with useful characteristics can be obtained in the tampon of Balzar.

For claim 11, Balzar does not disclose that the overwrap is 100% rayon. Sheldon discloses a tampon that has an overwrap covering the absorbent material of the tampon (as is well known and old in the tampon art). Sheldon discloses that the overwrap can be made 100% rayon. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide Balzar with a 100% rayon

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overwrap as disclosed by Sheldon. Rayon (being regenerated cellulose fibers) is cheaper than synthetic materials, is very biocompatible, and for these reasons one of ordinary skill in the art would find its use obvious.

9. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Balzar (5891123) in view of Agyapong et al. (6554814). Balzar does not disclose the overwrap as being a rayon/polypropylene 50/50 blend. Agyapong discloses a tampon with an overwrap. The overwrap is disclosed as being particularly made from rayon, polyethylene, polypropylene, and blends of these materials. The statement "and blends of these materials" is broad and includes a blend of just rayon and polypropylene. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the overwrap of Balzar with a rayon/polypropylene overwrap as disclosed by Agyapong to obtain a good overwrap. With respect to the 50/50 blend, the examiner considers this to be a design choice that is within the purview of one of ordinary skill in the art. A rayon/polypropylene blend is known in the art, and arriving at an optimal ratio of the two materials involves only routine skill in the art. *In re Aller*, 220 F.2d 454, 456, 105USPQ 233, 235 (CCPA 1955).

10. Claims 5,12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

11. Claim 8 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

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12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Brown, Jr. (5185010), Messing (3854481), Lochte et al. (US2002/0026177A1), Friese (4816100), and Balzar (5827256) disclose tampons with overwraps.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dennis Ruhl whose telephone number is 703-308-2262. The examiner can normally be reached on Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on 703-308-1957. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3590 for regular communications and 703-305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

DR
May 16, 2003


DENNIS RUHL
PRIMARY EXAMINER